

Order

Michigan Supreme Court
Lansing, Michigan

February 5, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2007-38

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment
of Rule 6.201 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.201 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.mi.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.201 Discovery

(A) [Unchanged.]

(B) Discovery of Information Known to the Prosecuting Attorney. ~~Upon request, the~~
The prosecuting attorney must provide each defendant:

- (1) any exculpatory information or evidence known to the prosecuting attorney;
and
- (2) upon request,
 - (a) any police report and interrogation records concerning the case,
except so much of a report as concerns a continuing investigation;

- (3)(b) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;
- (4)(c) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and
- (5)(d) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C)-(J)[Unchanged.]

Staff Comment: The proposed amendment of MCR 6.201(B)(1) would eliminate the requirement that the prosecuting attorney provide the defendant with any exculpatory information or evidence known to the prosecuting attorney only upon request. This proposal also clarifies that the prosecuting attorney is required to provide such information or evidence regardless of whether it is requested by the defendant. The Court would appreciate specific comments on whether a court rule requiring the prosecuting attorney to provide the defendant with exculpatory information or evidence is necessary, in light of the prosecuting attorney's constitutional obligation to do so under *Brady v Maryland*, 373 US 83 (1963), and, if so, whether the proposed amendment of MCR 6.201(B)(1) is consistent with the requirements of *Brady*.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2007-38. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 5, 2008

Corbin R. Davis
Clerk